

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH C. WEBB and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Ashburn, NC

*Docket No. 00-1231; Submitted on the Record;
Issued May 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion.

On April 4, 1991 appellant, then a 27-year-old distribution clerk, filed a claim for an occupational disease (Form CA-2), alleging that her carpal tunnel syndrome was caused by her employment.

By letter dated September 7, 1991, the Office accepted appellant's claim for temporary aggravation of bilateral carpal tunnel syndrome with cervical neuropathy.

On November 5, 1997 appellant filed a claim (Form CA-2a), alleging that she sustained a recurrence of disability.

By decision dated February 10, 1998, the Office found the evidence of record insufficient to establish that appellant had any disability causally related to her September 11, 1990 employment injury.¹ On March 12, 1998 appellant requested reconsideration of the Office's decision.

By decision dated April 12, 1999, the Office denied appellant's request for modification based on merit review of the claim. On May 14, 1998 appellant requested reconsideration of the Office's decision.

¹ Appellant stated in a July 5, 1991 narrative statement that she first experienced symptoms of pain, tingling, numbness and a loss of strength in her right hand/wrist/arm in October/November 1990. The medical evidence of record establishes that appellant experienced these symptoms beginning September 11, 1990.

In a decision dated June 10, 1999, the Office denied appellant's request for modification based on a merit review. On May 19, 1999 appellant requested reconsideration of the Office's decision.

By decision dated January 25, 2000, the Office denied appellant's request for reconsideration without a review of the merits of the claim on the grounds that the evidence submitted was of an immaterial nature and thus, insufficient to warrant review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² As appellant filed her request for appeal on February 25, 2000, the only decision before the Board is the January 25, 2000 decision denying appellant's request for reconsideration on the merits.³

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

In her letter requesting reconsideration, which was received by the Office on May 19, 1999, appellant stated that her current condition of myofascial pain was caused by her employment-related carpal tunnel syndrome. She failed to advance a point of law not previously considered by the Office. In addition, appellant did not submit any relevant and pertinent evidence not previously considered by the Office to support her contention. The issue in this case, whether appellant met her burden of proof to establish that she sustained a recurrence of disability causally related to her September 11, 1990 employment injury, is medical in nature and must be addressed by a physician; however, appellant did not submit any new medical evidence with her request for reconsideration.

Inasmuch as appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, she has not established that the Office abused its discretion in denying her request for review under section 8128 of the Act.

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ Because more than one year has elapsed between the issuance of the Office's June 10, 1998 merit decision and February 25, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 10, 1998 decision. *See* 20 C.F.R. § 501.3(d)(2).

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

The January 25, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member